CHARANJIT SINGH SANTOKH SINGH A

v.

MAJLIS PEGUAM MALAYSIA & ANOR

HIGH COURT MALAYA, IPOH B
HARMINDAR SINGH DHALIWAL J
ZAINAL ADZAM J
CHOONG SIEW KHIM JC
[ORIGINATING MOTION NO: 25-28-03-2012]
16 JANUARY 2013 C

LEGAL PROFESSION: *Professional discipline - Restoration to Roll of Advocates and Solicitors - Dishonouring client's cheque - Applicant's name struck off Roll for 13 years - Seriousness of offence committed - Whether there was strong basis for restoration - Conduct of applicant - Whether applicant fit and proper person to resume practice - Legal Profession Act 1976, s. 107* D

LEGAL PROFESSION: *Roll of Advocates and Solicitors - Restoration to Roll - Dishonouring client's cheque - Applicant's name struck off Roll for 13 years - Seriousness of offence committed - Whether there was strong basis for restoration - Conduct of applicant - Whether applicant fit and proper person to resume practice - Legal Profession Act 1976, s. 107* E

This was an application by the applicant to have his name restored to the Roll of Advocates and Solicitors of the High Court of Malaya ('the Roll') pursuant to s. 107 of the Legal Profession Act 1976 ('LPA'). Following a complaint lodged by the Bar Council for dishonouring a client's cheque, the applicant, an advocate and solicitor, was ordered by the Disciplinary Board to be struck off the Roll. After the incident, the applicant was employed as a clerical staff in a legal firm and in that capacity, he attended with counsel in interviewing clients, preparing affidavits and other general solicitors' work. In the present application, the applicant averred that he was a fit and proper person to be restored to the Roll and in support of his contention, had procured the recommendation of four senior members of the Bar. The applicant further submitted that he had shown repentance and penitence for a period of 13 years for being careless. In opposing the appellant's application, the respondent argued that the applicant had failed to show that he was a fit and proper person to resume practice by submitting that: (i) the applicant's ex-wife had expressed her intention to file an affidavit to intervene F G H I

A in the readmission application as it was alleged that the applicant failed to pay maintenance for his two children; and (ii) the applicant's involvement in the legal field was questionable. It was also submitted that no weight should be attached to three of the referees as they have been the subject of many complaints and
B fines by the Disciplinary Board.

Held (allowing application)
Per Harminder Singh Dhaliwal J delivering unanimous judgment of the court:

C **(1)** The allegations of the ex-wife were unpersuasive. In matrimonial disputes, parties are prone to exaggerate the faults of their spouses and emotions can and often take precedence over reason such that rational argument or discourse is
D difficult. More importantly, the applicant's ex-wife did not file any affidavit and the Bar Council deemed it fit not to provide further information with regard to her allegations. The Bar Council's report, mandated by s. 107(3) of the LPA, was also filed at the eleventh hour and this provided the applicant with very little opportunity to mount a reply. Even with such
E notice, the applicant provided evidence that he had paid the maintenance for his children. (para 22)

(2) The Bar Council had neither identified the referees nor elaborated on the complaints against them. In order to be
F absolutely fair, the Bar Council ought to have provided particulars as to the complaints against the referees in order for the court to be able to determine if they indeed have a tainted background as alleged. The court would also have some material before it to determine the weight to be attached
G to their recommendations. Bald and blanket statements would not do. Since the Bar Council's report was filed late, there was no opportunity for the applicant and his referees to contest the assertions of the Bar Council. Therefore, the Bar Council's objections on this ground must fail. (para 23)

H **(3)** With the experience the applicant had obtained as a clerical staff in a legal firm, coupled with the experience and training he had prior to his disbarment, it can hardly be argued that he had lost his legal knowledge. (para 24)

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(4) It is fair and reasonable for the applicant to be restored to the Roll. There was no evidence of dishonesty in the case of the applicant. He was grossly negligent or reckless and for that, he had received more than sufficient punishment for his mistake and the court is convinced that he had been fully rehabilitated. The applicant had shown repentance and penitence when he accepted his punishment for the last 13 years. (para 25)

(5) There was no issue with regard to restitution and public confidence of the legal profession would not be diminished by the restoration to the Roll of the applicant. Public interest would be served by affording the applicant a second chance to serve the society by utilising his knowledge and experience. What the applicant had undergone would also serve as a strong deterrent to potential offenders who adopt a cavalier attitude when dealing with client's accounts. (para 27)

Case(s) referred to:

Chan Chow Wang v. Malaysian Bar [1986] 1 LNS 94 HC ***(refd)***

Ex-parte FE Maddocks Cohen [1956] 73 WN (NSW) 126 ***(refd)***

Gnaguru Thamboo Mylvaganam v. Law Society of Singapore [2008] 3 SLR 1 ***(refd)***

Kalpanath Singh Ram Raj Singh v. Law Society of Singapore [2009] 3 SLR 1018 ***(refd)***

PP v. Wong Kim Fatt [1991] 3 CLJ 2188; [1991] 3 CLJ (Rep) 620 HC ***(refd)***

Re Ram Kishan [1992] 1 SLR 529 ***(refd)***

Teoh Hooi Leong v. Bar Council, Malaysia [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451 SC ***(refd)***

Thavananthan Balasubramaniam v. Majlis Peguam Malaysia [2009] 6 CLJ 217 FC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 99(3), 107(3)

For the applicant - Jaswant Singh (Shivdev Singh with him); M/s LH Singh & Co

For the respondents - Babu Raj Raja Gopal; M/s Kean Chye & Sivalingam

Reported by Najib Tamby

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JUDGMENT

Harmindar Singh Dhaliwal J:

[1] This is an application before three judges for the applicant by the name of Charanjit Singh a/l Santokh Singh to be restored to the Roll of Advocates and Solicitors of the High Court of Malaya under s. 107 of the Legal Profession Act 1976 ("LPA 1976"). The applicant had been struck off the Roll *vide* order of the Disciplinary Board dated 27 February 1999.

C **Background Facts**

[2] The facts and circumstances leading to the applicant being struck off the roll and the instant application can be stated as follows. The applicant read law at the University of Buckingham and was called to the Bar on 4 January 1992. Thereafter, he practiced law as a legal assistant at Messrs Brijnandan Singh Bhar & Co until 31 October 1992. On 1 November 1992, he set up Messrs Charanjit & Associates and practiced as a sole proprietor. On 2 January 1997, the applicant joined Messrs Harbajan Singh Sidhu & Co as a legal assistant. He was in possession of his last Sijil Annual for the year 1997.

[3] In 1995, the Bar Council lodged a complaint pursuant to s. 99(3) LPA 1976 against the applicant for breach of the Solicitors' Account Rules 1990 based on the complaint by one Mohan a/l Batu Malai ("Mr Mohan"). Mr Mohan claimed that the applicant had issued a cheque from his firm's client's account for the sum of RM13,800 being settlement of an accident claim. The said cheque was dishonoured with the remarks "refer to drawer" indicating that there were insufficient funds in the applicant firm's client's account.

[4] In its findings, the Disciplinary Committee stated that a professional should appreciate the fact that dealing with client's money is a very serious issue, in particular drawing client's cheque, which would cause losses to the client. The Disciplinary Committee recommended that the applicant be suspended for nine months from 16 April 1998 to 31 December 1998. The Disciplinary Board, however, in an order dated 27 February 1999 ordered that the applicant be struck off the roll of advocates and solicitors of the High Court of Malaya.

Case For The Applicant

[5] For the applicant, it was argued that he was a fit and proper person to be restored to the roll. There was no criminal element in what he had done or any misappropriation of client's monies. He had issued a cheque without ensuring there were available funds. He had assumed that his clerk had already banked into the client's account a cheque from MNI Insurance in respect of the accident claim involving the client Mr Mohan. When Mr Mohan returned with the dishonoured cheque, the applicant immediately apologised to Mr Mohan for the mistake and reissued another cheque which was duly honoured. Mr Mohan then withdrew his complaint against the applicant and did not appear at the Disciplinary Inquiry.

[6] It was submitted that the applicant was remorseful for his careless mistake and had accepted the findings of the Disciplinary Committee and the Disciplinary Board and had never sought to challenge the same for 13 years. The incident had caused severe embarrassment to the applicant and his family and especially his late father who rose from the rank and file to become a distinguished senior member of the police force and later a member of the Malaysian Bar himself.

[7] After the incident, the applicant took to taking care of his two children until his separation with his wife in October 2009. He then returned to Ipoh and was employed as clerical staff with the legal firm Messrs LH Singh & Co. In that capacity, he attended with counsel in interviewing clients, preparing affidavits and other general solicitors work.

[8] The applicant has procured the recommendation of four senior members of the Bar as well as a senior pastor of the Arise Shine Assembly in Ipoh under whom the applicant underwent counselling after the breakup of his marriage.

[9] It was further submitted that the applicant has shown repentance and penitence for a period of 13 years for being careless. It was urged upon the court that by way of comparison with the cases of *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217; [2010] 3 MLJ 316, *PP v. Wong Kim Fatt* [1991] 3 CLJ 2188; [1991] 3 CLJ (Rep) 620; *Gooi Soon Seng* (unreported) and *Phang Ah Hee* (unreported), where those with convictions in a court of law for criminal offences were reinstated, the applicant was not charged and convicted for any offence.

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Case For The Respondents

[10] On behalf of the respondent Bar Council, who opposed the application, it was argued that the applicant had failed to show that there had been such a change in character as to make him a fit and proper person to resume practice at the Bar as:

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(a) the applicant's ex-wife had expressed her intention to enter caveat and to intervene in the readmission application;

(b) his employment history starts only in the year 2009; and

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(c) his involvement in the legal field is questionable.

[11] It was also submitted that no weight ought to be attached to three of the referees as they had been the subject of many complaints and fines by the Disciplinary Board.

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The Law

[12] Coming now to the law, the provision regarding the restoration to the roll of any advocate and solicitor who has been struck off is to be found in s. 107 LPA 1976 as follows:

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(1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the roll the name of an advocate and solicitor which has been removed from, or struck off, the roll.

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(2) Any application that the name of an advocate and solicitor be restored to the roll shall be by originating motion supported by affidavit, before High Court.

(3) Notice of the motion shall be served on the Bar Council which shall be represented at the hearing of the motion and shall place before the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the roll and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be investigated in connection with the application.

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(4) In the exercise of its jurisdiction under this section, the High Court shall comprise three Judges. A

(5) Any party aggrieved by the decision of the High Court shall have a right of appeal to the Federal Court.

Provided that the Judges who made the decision appealed from shall not sit as members of the Federal Court. B

[13] The Supreme Court in *Teoh Hooi Leong v. Bar Council* [1991] 2 CLJ 1117; [1991] 1 CLJ (Rep) 451; [1991] 2 MLJ 190 had occasion to enunciate the considerations that apply in dealing with any application under s. 107 LPA 1976. The court held: C

(1) Under s. 107(1) of the Legal Profession Act 1976, the High Court may, if it thinks it fair and reasonable, order the registrar to restore the name of any advocate and solicitor which has been removed or struck off the roll. The word 'fair' must necessarily mean that the decision must be fair to members of the public, to the court and last but not least to the advocate and solicitor concerned. To be reasonable the decision must be based on reasonable grounds and be supported by cogent evidence and not one based on conjecture or speculation. D E

(2) A conviction should not be regarded in every case as a permanent unfitness. Disbarment is not necessarily intended to be permanent but that a heavy burden lay upon an applicant to show that he is now a fit and proper person to have his named restored to the roll. The lapse of time since the conviction is thus a material consideration. It is true that there should be strong disinclination to re-admit to the profession an advocate and solicitor who had been guilty of improper conduct. The principle that once a solicitor has been struck off the roll for dishonesty he cannot be restored unless there are exceptional circumstances should no longer apply in absolute terms. If an advocate and solicitor lives a blameless life and there is evidence that he has rehabilitated himself generally and there are members of the profession who can vouch to this change, that may overcome the initial misconduct. F G H

(3) The duty of the court in a case like this is to exercise its discretion having regard to the materials available before it and the particular facts of the case. The question should be seen as an exercise of discretion according to particular facts of the case. It should never be regarded as a principle laid I

down as a rule of law that an advocate and solicitor who has been struck off the roll for dishonesty can never be reinstated.

[14] Earlier in *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159, Harun J (as he then was) and speaking for the court pronounced (at p. 160):

> In re-admitting applicants to the Bar, the Court has a duty to litigants and to the legal profession to ensure that such persons are of the highest integrity and honour. The Court must also be satisfied, in the public interest, that the Applicant is not likely to repeat these offences if he is re-admitted. The onus is therefore on the Applicant to show that:
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> (a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;
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> (b) he is truly penitent; and
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> (c) he has made restitution.

[15] And recently in *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217; [2010] 3 MLJ 316, the Federal Court was faced with an appeal against the decision of the High Court dismissing the appellant's application to be restored to the roll of advocates and solicitors. Speaking for the Federal Court, Zulkefli FCJ (now CJ Malaya) observed at p. 226 (CLJ); p. 323 (MLJ):

> The main issue for consideration in this appeal is whether it is fair and reasonable to restore the appellant to the roll. Following from there is the question as to how long the appellant shall wait from the time he was struck off the roll until he is allowed to apply to be restored to the roll. I am of the view that each case must be considered on its own special factual circumstances bearing in mind there is no time frame stipulated under s 107 of the LPA before a disbarred member can be restored to the roll. I am also of the view that the sentences meted out on other similar comparable cases to the appellant's case should be taken into consideration in determining whether it is fair and reasonable to restore the appellant to the roll.

[16] Across the causeway, the Singapore High Court in *Re Ram Kishan* [1992] 1 SLR 529 held that in exercising its judicial discretion as to whether or not to replace a name on the roll, the court must regard as its primary duty the protection of the interests of the public and the profession as a whole over and

above the interests of the applicant. In taking out his application for replacement, the onus will be on him to convince a court of three judges that he is still a person on whose integrity and honour reliance may be placed.

[17] And more recently, in *Kalpanath Singh Ram Raj Singh v. Law Society of Singapore* [2009] 3 SLR 1018, the Singapore High Court outlined the factors to be considered in any reinstatement application. The court observed that the threshold factor which the court must carefully consider is whether there has been full rehabilitation of the applicant. The key question here is whether the applicant has been fully rehabilitated and is now a fit person to be restored to the roll or is it likely that he or she might lapse into the same or similar conduct that resulted in him or her being struck off the roll in the first place.

[18] The court also observed, following the principles articulated in *Gnaguru Thamboo Mylvaganam v. Law Society of Singapore* [2008] 3 SLR 1, that the second key question, which is somewhat linked to the first question as alluded to in the preceding paragraph, is whether the restoration of the applicant would diminish public confidence in the general reputation and standing of the legal profession. The link between these key factors, as perceived by the court, is that "an errant advocate and solicitor, who is not fully rehabilitated, continues to pose a threat to society and will cast a pall of doubt over the integrity and reputation of the legal profession" (at p. 1028).

[19] The court in *Kalpanath* however accepted that although the protection of public interest in the integrity of the legal profession as well as members of the public from errant lawyers was essential, there was also "a public interest in encouraging the rehabilitation of those who have gone astray and allowing those who are now reformed to re-enter society and contribute to its well-being" (at p. 1029).

Decision

[20] Coming back to the instant application - has the applicant demonstrated that he is a person on whose integrity and honour reliance may be placed and that he is a fit and proper person to be reinstated to the roll? The Bar Council is relying on a letter and electronic mail by the applicant's ex-wife to the Bar Council to show that the applicant is not a fit person. I do not propose to go into the contents of the two documents for it will suffice to

summarise her allegations as suggesting that the applicant, by his conduct and behaviour, is unfit to be readmitted as advocate and solicitor. Much of what she says, as it appears to me, stems from the failure of the applicant to pay the maintenance for his two children.

[21] Now it often happens in matrimonial disputes that parties are prone to exaggerate the faults of their spouses. In such cases, emotion can and often takes precedence over reason such that rational argument or discourse is difficult. More importantly, however, the applicant's ex-wife has not filed any affidavit as she said she would. The Bar Council has also deemed it fit not to provide further information with regard to her allegations.

[22] It must not be overlooked as well that the Bar Council's report, which is mandated by s. 107(3) LPA 1976, was filed at the eleventh hour. This was most unfortunate as it provided little opportunity for the applicant to mount a reply. Even with such notice, the applicant was able to provide evidence that he has paid the maintenance for his children. Given the circumstances, the allegations of the ex-wife, as they have indeed remained allegations, are unpersuasive.

[23] With regard to the rather curious assertion by the Bar Council of the lack of credibility and tainted background of three of the referees, the Bar Council has neither identified the referees nor have they elaborated on the complaints against them. In order to be absolutely fair, the Bar Council ought to have provided particulars as to the complaints against the referees so that the court will be able to determine if they indeed have a tainted background as alleged. In this way as well, the court will have some material before it to determine the weight to be attached to their recommendations. Bald and blanket statements will not do. It must again be observed that as the Bar Council's report was filed late, there was no opportunity for the applicant, and indeed his referees, to contest the assertions of the Bar Council. Given this state of affairs, the Bar Council's objections on this ground must fail.

[24] As for the objection in connection with the applicant's involvement in the legal field, I think that with the experience he has obtained as a clerical staff in the legal firm of Messrs LH Singh & Co since 2009, coupled with the experience and training he had prior to his disbarment, it can hardly be argued that he has lost the knowledge of the law.

[25] In the final analysis, it seems to me that the applicant has received more than sufficient punishment for his mistake. What the applicant has undergone will serve as a strong deterrent to potential offenders who adopt a cavalier attitude when dealing with client's accounts. From the material available to the court, I am convinced that the applicant has been fully rehabilitated. After undergoing the punishment and the consequences that followed, and with two children to care for, it is most unlikely that he will ever lapse into committing the same or similar error in the future.

[26] It is worth noting that applicants with criminal convictions for corruption and criminal breach of trust have been given a second chance after the courts were satisfied that they have been rehabilitated. I need not elaborate as these instances have been well documented in the case of *Thavananthan*, *supra*. Significantly as well, there was no evidence of dishonesty in the case of the applicant. The most that can be said against the applicant was that he was grossly negligent or reckless and for that he has paid a heavy price.

[27] The applicant has also shown repentance and penitence when he accepted his punishment for the last 13 years. There is no issue with regard to restitution. I do not also think that public confidence of the legal profession will be diminished by the restoration to the roll of the applicant. I think that public interest will also be served by affording the applicant a second chance to serve society by utilising his knowledge and experience. His disbarment will also serve him well. As opined by the senior pastor who filed a letter on behalf of the applicant and with whose sentiments I agree; "only those who have suffered much will know the suffering of others". In a somewhat similar vein is the statement in *Ex-parte FE Maddocks Cohen* [1956] 73 WN (NSW) 126; "But the false steps of youth and early manhood are not always the final proof of defective character and unfitness. The presumption which, according to circumstances, they may appear to raise may surely be overcome by a subsequent blameless career".

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Conclusion

[28] In the circumstances, and for the reasons stated, I have come to the view that it is fair and reasonable for the applicant to be restored to the roll. Accordingly, the Registrar is ordered to
B restore to the roll the applicant as advocate and solicitor. It is further ordered that the parties are to bear their own costs.

[29] Finally, my learned brother and sister, Zainal Adzam bin Abd Ghani J and Choong Siew Khim JC, have seen this judgment in draft and have expressed their agreement with it. This judgment
C will therefore constitute the unanimous judgment of the court.

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